

STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
Land Division  
Honolulu, Hawaii 96813

November 22, 2010

Board of Land and Natural Resources  
State of Hawaii  
Honolulu, Hawaii

PSF No.: 10MD-018

Maui

Authorize the Chairperson of the Department of Land and Natural Resources to Negotiate the Terms and Conditions, and Sign a Memorandum of Agreement between the Department, Tri-Isle Resource Conservation & Development Council, Inc., and Uluniu Beach Reserve Association regarding Maintenance of the Uluniu Kihei Beach Reserve; Grant of Term, Non-Exclusive Easement to Tri-Isle Resource Conservation & Development Council, Inc. for Land Management Purposes; Cancellation of Revocable Permit S-6710 to Myron Higashi and Revocable Permit S-5377 to Douglas M. Sherman; and Issuance of Management Right-of-Entry, Waiohuli-Keokea Beach Homesteads, Kihei, Maui, Tax Map Key Numbers: (2) 3-9-007: portion of 005, (2) 3-9-007: 065, (2) 3-9-008:001, (2) 3-9-009:011, (2) 3-9-009:031, (2) 3-9-009:032, (2) 3-9-009:033, (2) 3-9-009:034 and (2) 3-9-010:777.

APPLICANT:

The Department of Land and Natural Resources, Land Division (DLNR), Tri-Isle Resource Conservation and Development Council Inc. (Tri-Isle), a 501(c)(3) non-profit corporation authorized under the USDA Natural Resources Conservation Service, and Uluniu Beach Reserve Association (UBRA), an unincorporated association.

LEGAL REFERENCE:

Sections 171-6, 171-13, 171-43.1, and 171-55, Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government lands situated at Waiohuli, Keokea Beach Homesteads, Kihei, Maui, identified by Tax Map Key Numbers: (2) 3-9-007: portion of 005 (south of VFW's parcel 003), (2) 3-9-007:065, (2) 3-9-008:001, (2) 3-9-009:011, (2) 3-9-009:031, (2) 3-9-009:032, (2) 3-9-009:033, (2) 3-9-009:034 and (2) 3-9-010:777, as shown on the attached maps labeled Exhibits A, B, C and D.

AREA:

15.2 acres, more or less.

ZONING:

State Land Use District: Rural

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act

DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: YES \_\_\_ NO X

CURRENT USE STATUS:

Encumbrances – Staff has verified that the following encumbrances exist on the property:

TMK: (2) 3-9-007:005 – Previously encumbered by Revocable Permit No. S-6749 to Norman Hill for Landscape & Maintenance Purposes until 10/8/2004. Request has been made by the County of Maui to utilize the portion of this parcel, fronting the Veterans of Foreign Wars facility) resulting in an addition to the existing Executive Order 4087.

TMK: (2) 3-9-007:065 – Unencumbered

TMK: (2) 3-9-008:001 – Unencumbered

TMK: (2) 3-9-009:011 – Unencumbered

TMK: (2) 3-9-009:031 – Currently encumbered by Revocable Permit No. S-5377 to Douglas Sherman for Landscape & Maintenance Purposes. Permit to be cancelled as of the date of board approval for new disposition to Tri-Isle Resource Conservation and Development Council, Inc.

TMK: (2) 3-9-009:032 – Unencumbered

TMK: (2) 3-9-009:033 - Formerly encumbered by Revocable Permit No. S-6733 to E.F. Bello for Landscape & Maintenance Purposes. Permit was cancelled effective as of August 31, 2002. Current status is unencumbered.

TMK: (2) 3-9-009:034 - Currently encumbered by Revocable Permit No. S-6710 to Myron Higashi for Landscape & Maintenance Purposes. Permit to be cancelled as of the date of board approval for new disposition to Tri-Isle Resource Conservation and

Development Council, Inc.

TMK: (2) 3-9-010:777 – Unencumbered, shoreline area.

EXHIBITS:

Exhibit (A): GIS Overview photo with a TMK overlay of the subject area from the north end at Waipuilani Park, through the south end off of Waiohuli Street.

Exhibit (B): GIS Overview photo with a TMK overlay of the northern portion of the subject area (2) 3-9-007: to the mid section of the project area (2) 3-9-008:.

Exhibit (C): GIS Overview photo with a TMK overlay of the southern end of the subject area (2) 3-9-009:.

Exhibit (D): Four (4) DAGS-Survey Division worksheet maps with subject area highlighted from the north end at Waipuilani Park, through the south end off of Waiohuli Street.

Exhibit (E): EXEMPTION NOTIFICATION regarding the preparation of an environmental assessment pursuant to Chapter 343, HRS and Chapter 11-200, HAR

CHARACTER OF USE:

Nonexclusive right, privilege and authority to use and maintain State-owned land for purposes of restoring and maintaining the natural shoreline habitat and coastal dune ecosystem, maintaining the area mauka of the dunes in a manner appropriate for public access and use, including without limitation, the accommodation and support of the proposed South Maui Coastal Heritage Corridor.

COMMENCEMENT DATE:

To be determined by the Chairperson.

CONSIDERATION:

\$480.00 per annum (Minimum Rent Policy for New Dispositions, May 13, 2005).

METHOD OF PAYMENT:

Semi-annual payments, in advance.

RENTAL REOPENINGS:

Every ten (10) years during the lease term, by staff pursuant to changes in Minimum Rent Policy, if any, from time to time.

EASEMENT TERM:

Twenty (20) years

PERFORMANCE BOND:

Twice the annual rental amount.

PROPERTY CHARACTERISTICS:

Utilities – None within the subject Beach Reserve area.

Slope - 12% slope

Rainfall -10 to 12 inches annually

SCS Soil Series - Jaucas Saline (Sand Soils)

Land Study Bureau – Beach Land

Legal access to property – Staff has verified that there is legal access to the property from Uluniu Road and Halama Street.

Subdivision – Staff has verified that the subject properties are legally subdivided lots.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

In accordance with the "Division of Land Management's Environmental Impact Statement Exemption List", approved by the Environmental Council and dated April 28, 1986, the subject request is exempt from the preparation of an environmental assessment pursuant to Exemption Class No. 1, Item Numbers. 1, 2, 3 and 5 that state "(1) Routine maintenance of state lands to remove weeds, brushes, grass and other unwanted overgrowths, (2) Routine and emergency removal of boulders, rocks, fallen trees and other debris necessary to maintain state lands in a safe condition, (3) Trimming and removal of overhanging tree branches or roots encroaching into abutting private properties, and (5) Routine and emergency repair and restoration of existing structures and facilities on state lands involving negligible or no expansion or change of use beyond that previously existing." See Exhibit E.

DCCA VERIFICATION:

Place of business registration confirmed:	YES <u>x</u>	NO <u>  </u>
Registered business name confirmed:	YES <u>x</u>	NO <u>  </u>
Applicant in good standing confirmed:	YES <u>x</u>	NO <u>  </u>

SPECIAL CONDITIONS:

Applicants shall be subject to and be required to comply with the following special conditions:

1. The subject area shall remain open and accessible to the general public at all times.
2. A greenway will be allowed to exist in the following areas between the makai property lines of privately owned parcels abutting the reserve area and: a) up to 15 feet inland of the mauka footing of the existing or forming dunes where sand dunes exist or are forming on eroded banks; and b) up to 15 feet inland of the shoreline where there are no existing or forming sand dunes.
3. Landscaping, irrigation and maintenance of non-native grasses will be allowed in the greenway.
4. Non-irrigated native vegetation may be installed and may be and is encouraged to be maintained in any location in the reserve area that is inland of the shoreline.
5. The parties recognize that the existence and location of dunes, and the location of the shoreline vary naturally throughout the seasons and over time. Especially following storms or unusual conditions, reasonable time will be allowed for natural or active processes to reach equilibrium, and for the existence and location of dunes, and the location of the shoreline to be re-established naturally.
6. No threatened or endangered species or their respective habitats shall be disturbed or otherwise adversely impacted by any activity conducted by Applicant pursuant to the easement, except as allowed by law.
7. The Levin Plan (more specifically described below) will serve generally as the framework for use and maintenance of the area, and deviations from that plan that are not specifically agreed to in the MOA will be subject to concurrence by DLNR staff members from the Office of Conservation and Coastal Lands (OCCL), Division of Aquatic Resources (DAR), and Division of Forestry and Wildlife (DOFAW) who are responsible for the regulation of coastal, wildlife or other environmental issues in the area, as may be appropriate. The agreement shall recognize that deviations from the Levin Plan may be appropriate in specific locations and circumstances.
8. Irrigation shall be allowed in greenway, subject to limitations set forth in the MOA regarding delivery systems, amount, duration, location and allowable time periods, provided that before installing such irrigation, Tri-Isle or UBRA shall provide to DLNR a scaled site plan showing the proposed installation, and that no irrigation shall be permitted during the daylight hours between sunrise and sunset. No survey shall be required.
9. Low impact signage designed to inform that the area is for public use and to keep area users away from and off of shoreline habitat and dune systems, to the maximum extent possible.
10. Restoration and maintenance of the natural shoreline habitat and dune systems by, among other things, reintroducing only native vegetation indicative of and appropriate to the area, and to the extent practicable, control of feral animal populations that may pose a

threat to nesting protected bird and turtle species.

11. Any major improvements or alterations to the area that are not specified in the MOA shall require consent from the DLNR. Tri-isle shall inform DLNR of and provide information regarding all new improvements or alterations prior to installation or implementation of the same.
12. Ensure that all trees in the area maintained in a safe condition, e.g., periodic trimming and coconut removal, as appropriate.
13. DLNR, Tri-Isle and UBRA will work collaboratively towards the goal of replacing County water use with private well water for irrigation in the reserve area, as may be appropriate and practicable.
14. No fertilizer use.
15. No dirt, topsoil or similar material shall be placed on the subject area without prior written consent of the Chairperson.
16. All tools, equipment, improvements and other property brought or placed upon the subject property by Tri-Isle or UBRA shall remain the property of the same and shall be removed at the termination of the Easement unless permitted to remain by DLNR.
17. No commercial activities shall be allowed unless permitted by the Board of Land and Natural Resources (Board).
18. Notwithstanding anything to the contrary, the parties shall take all necessary and appropriate actions to protect the public's health, safety and welfare in the course of carrying out its obligations under the MOA, easement and right-of-entry.
19. Easement may be assigned with prior written consent of Chairperson.
20. Tri-Isle may terminate the Easement at any time with 30 days prior written notice, provided Applicant removes all improvements placed or made in the subject area to the satisfaction of DLNR.
21. DLNR may terminate the Easement for cause at any time with 30 days prior written notice, including without limitation, Tri-Isle's failure to perform its restoration or maintenance responsibilities to the satisfaction of DLNR, provided Tri-Isle is given a 30-day opportunity to cure the default or deficiency and fails to do so.
22. DLNR may close or withdrawal the subject area or any portion thereof at any time, provided such closure or withdrawal is necessary or appropriate for a public purpose, such as, without limitation, ensuring the public's health, safety and welfare.
23. DLNR shall cite any owner of land adjacent to the reserve area for any encroachments by that landowner into the reserve area. Tri-Isle and UBRA shall not be liable for the actions of any individual landowner that have not been approved by Tri-Isle and UBRA.
24. DLNR and the Chairperson reserve the right to impose additional terms and conditions, if deemed necessary and appropriate.

#### DISCUSSION:

The Uluniu Kihei Beach Reserve Area is noted for sea turtle nesting and its shoreline habitats and dune systems should remain in its natural state in order to minimize adverse impacts to potential turtle and seabird nesting sites. Recent studies presented by the Division of Aquatic

Resources have documented higher than normal nutrient levels along the South Maui coastline, which have been claimed to be contributing to the increased spread of invasive algae that results in continued adverse impacts to healthy coral reef systems in the area. Excessive fertilization and irrigation of near shore properties have been claimed to be contributing significantly to high nutrient levels along the shoreline.

Existing documents establish that DLNR and Maui County have in the past, formally allowed or required some of the adjacent landowners to maintain and irrigate the beach reserve area to create an inviting, park-like setting for public use. Over the ensuing years, however, some landowners appear to have overstepped the maintenance authority that they thought they had and installed or created improvements in the area that may have created the impression that the public reserve area is private property. Such actions resulted in the apparent need for DLNR to initiate enforcement action to remove those unauthorized improvements and restore the public character of the area.

Since 2008, the Maui District Land Office has been working with the adjacent private property owners along the subject beach reserve, in an attempt to remove all unauthorized improvements and encroachments from within the beach reserve. These efforts have tremendously changed the area in a very positive way. Lateral public access through the beach reserve is now unobstructed, view plains have been opened up and previous encroachments which may have created the impression that portions of the beach reserve was privately owned have been removed.

The Maui Department of Water Supply has requested voluntary cutbacks in use of the Central Maui water system due to water shortages throughout Maui County. The subject area is a user of this system and minimization of irrigation activities on these lands would be consistent with the County's request for cutbacks of water use.

In an attempt to create a win-win solution to the challenges posed in the subject area, some of the landowners in the area formed the Uluniu Beach Reserve Association (UBRA) and requested a long-term disposition from the Maui District Land Office to assist with management and protection of the subject beach reserve and dune system that form this unique and invaluable coastal resource. UBRA hired conservation planner Penny Levin to prepare a shoreline restoration plan to provide guidance regarding the future management strategies for the area. The Kihei Shoreline Reserve; Uluniu Section: Shoreline Habitat Restoration and Trail Corridor Plan dated August 20, 2008 (Levin Plan) provided numerous management recommendations that were generally acceptable to UBRA members and OCCL, DAR and DOFAW staff, with some exceptions.

The Maui District Land Office staff consulted with various State and County agencies regarding this request and its appropriateness, and was informed of the sensitivity of the Kihei Beach Reserve area, and special considerations required with regards to the surrounding natural habitat. After a series of discussions with UBRA members, DLNR feels that such disposition would be an acceptable use of the beach reserve area, as it would be managed in a consistent and uniform

manner in conformance with the ultimate goal of promoting resource protection and conservation. Appropriate measures with regards to environmental and resource protection will be taken while implementing a greenway or trail through the area for the South Maui Coastal Heritage Corridor. This greenway providing public access through the entire beach reserve area would also enhance it for public use and meet the long-term goals of the DLNR and the Kihei Community.

Staff believes that the most effective means for implementing this mutually beneficial arrangement under terms that would be acceptable to all parties is to have the parties enter into a Memorandum of Agreement (MOA) establishing the terms and guidelines of the arrangement and the rights and responsibilities of the parties, coupled with a term, non-exclusive easement and a management right-of-entry (to provide immediate access to the subject area until the easement is issued). While the major terms and conditions of the proposed MOA are set forth in this submittal, some outstanding minor issues and logistics of implementation need to be resolved and finalized. Staff is requesting that the Board delegate to the Chairperson, the authority and responsibility for negotiating, finalizing and executing the MOA on its behalf, based upon and subject to the terms and special conditions identified herein.

The applicant for the easement must be a legally recognized entity to ensure that the terms of the disposition are enforceable. UBRA intends to eventually formalize its status as a legally recognized nonprofit entity to assume the ultimate responsibility for implementing the terms under the MOA. Until that time, UBRA has obtained the cooperation of Tri-Isle Resource Conservation and Development Council Inc. (Tri-Isle), acting on its behalf, to be the applicant for the easement.

Tri-Isle, a 501(c)(3) non-profit corporation authorized under the USDA Natural Resources Conservation Service, is one of approximately 375 such entities nationwide which assist with grass-roots community based economic development and natural resource conservation projects. Tri-Isle pursues federal, state, local and private funding sources for approved projects and assists local project sponsors with management and financial administration. Tri-Isle is run by a 16 member Board of Directors, including representatives of Soil and Water Conservation Districts, County of Maui Departments, and at-large members from the community. Tri-Isle has experienced many successes over the years, which have included a broad range of project types and sizes. Major categories with notable examples include: (1) Recreation: County Bicycle Map and Recreation Map, Mokuleia Stairway (for beach access), Lahaina Pali and Ohai Trails, Kealia Pond Boardwalk and fence-line, and South Maui Coastal Heritage Corridor; (2) Agriculture and Natural Resources Conservation: Maui Invasive Species Committee, Watersheds, Farmers' Markets on Moloka'i & Lana'i, Puu-O-Kali Native Dryland Forest Protection, Maui Nui Botanical Gardens; (3) Economic Development: Moloka'i Telecommunications Center, Moloka'i and Maui Agricultural Development Programs; and (4) Infrastructure: Ulumalu-Peahi Community Waterline Replacement. These projects have already provided many quality-of-life benefits to Maui County's citizens.



In accepting this role, Tri-Isle indicated that no commercial activities of any kind would occur within the subject area. Tri-Isle's proposed actions would include restoration of the shoreline berm, planting of native plants, removal of invasive plants, care of the trees, and maintenance of an inland "greenway" which will serve as a north to south public pathway (part of the South Maui Heritage Corridor).

It is the intent of UBRA and Tri-Isle that upon or soon after the establishment of UBRA's status as a legally recognized nonprofit entity, all responsibilities assumed by Tri-Isle under this arrangement would be transferred to and assumed by UBRA. The easement must be assigned to UBRA at that point to facilitate the transfer of management responsibilities effectively. To that end, staff is recommending that the easement expressly allow assignment of the easement with prior written consent of the Chairperson.

By entering into this management arrangement, the parties seek to enter into a collaborative relationship to keep the subject beach reserve area open, accessible, safe and maintained for the mutually beneficial use of the public and the adjacent homeowners. The issuance of an easement to Tri-Isle will formalize the stewardship role of the Tri-Isle and UBRA (in restoring and maintaining the area for public use), and recognize a long-standing and ongoing improvement and maintenance effort by some landowners and community groups in the area.

#### Consideration and Bonding

As background, the Board typically grants easements to private individuals and entities at fair market value as established by an appraisal, either by a single lump sum payment or periodic payments over time. If the grantee or prospective grantee is an eleemosynary (charitable) organization, the Board may grant the easement, at a nominal value or rent, by direct negotiation. It is noted that the 501(c)(1) organization must be both organized by an Act of Congress and be an instrumentality of the United States, while the 501(c)(3) organization is a privately organized charitable organization.

Therefore, when considering dispositions to eleemosynary (charitable) organizations or religious organizations, the Board may grant an easement at an amount below fair market value or rental (i.e., nominal rent). On May 13, 2005, the Land Board established a Minimum Rent Policy for New Dispositions that stated, among other things, that the minimum rent for new dispositions be no less than \$480 per year. Staff believes "nominal rent" ought to be anywhere between fair market rent, or lower, but not lower than the minimum rent of \$480 per year. Annual rent for all of Land Divisions' non-profit tenants and grantees should be fair, reasonable and consistent. Therefore, staff is recommending the current annual rent be the \$480 minimum allowed by the Land Board's policy, subject to adjustment as the policy may be reviewed and modified from time to time.

Tri-Isle and UBRA are requesting that the annual payment for the easement be waived. UBRA has indicated that the owners abutting the reserve area have been spending approximately \$60,000 per year to care for portions of the reserve, and expects that with the activities allowed by the MOA, it will spend substantially more than that. Given that UBRA has requested waiver of annual rent above; given the amount of UBRA's anticipated annual expenditures; and given

that UBRA's activities and contributions will be voluntary, UBRA also requests waiver of the performance bond.

Cancellation of Revocable Permits

Proper implementation of the proposed management arrangement requires the elimination of prior dispositions that could result in conflicting management responsibilities and use of the subject area. As noted above, Revocable Permits S-6710 and S-5377, currently encumber the subject area. Staff has notified Myron Higashi and Douglas M. Sherman, permittees under those permits, of the proposed plan to allow Tri-Isle to manage the beach reserve area and simultaneously cancel their existing permits. The permittees are agreeable to the cancellation of their permits to facilitate the proposed purposes of the management arrangement contemplated by this board submittal.

Other Matters:

Tri-Isle and UBRA have not had a lease, permit, easement or other disposition of State lands terminated within the last five years due to non-compliance with such terms and conditions.

Agency Comments:

Comments were solicited from:

OCCL	Pending
DAR	Pending
DOFAW	Pending
Historic Preservation	Pending
CWRM	Pending
County Planning	Pending
County Water	Pending
OHA	Pending

HRS Chapter 343 Compliance:

There will be no change in the existing use of the area. The subject beach reserve area has always been used and will continue to be used as a public recreation area and public right-of-way. The actions contemplated by this request merely provide the vehicle by which the area's shoreline habitats and sand dune system can be restored to their natural conditions and will facilitate and maintain existing public access along the coast. No new structures or major physical improvements are contemplated within the beach reserve. Staff believes the activities contemplated by this request are exempted pursuant to "Division of Land Management's Environmental Impact Statement Exemption List" approved by the Environmental Council and dated April 28, 1986, Exemption Class No. 1, Item Numbers. 1, 2, 3 and 5, that state "(1) Routine maintenance of state lands to remove weeds, brushes, grass and other unwanted overgrowths, (2) Routine and emergency removal of boulders, rocks, fallen trees and other debris necessary to maintain state lands in a safe condition, (3) Trimming and removal of overhanging tree branches or roots encroaching into abutting private properties, and (5) Routine and emergency repair and restoration of existing structures and facilities on state lands involving

negligible or no expansion or change of use beyond that previously existing." Consequently, Staff is recommending that the Board find that the subject request is exempt from the preparation of an environmental assessment under HRS Chapter 343.

There are no other pertinent issues or concerns. Further, staff recommends the Board authorize the issuance of a management right-of-entry pending the issuance of the easement document.

RECOMMENDATION: That the Board:

1. Authorize the Chairperson to negotiate the terms and conditions and sign on behalf of the Department and the Board, a Memorandum of Agreement between the Board, Tri-Isle and UBRA, subject to the general terms and special conditions above and to the review and approval as to form by the Department of the Attorney General.
2. Declare that, after considering the potential effects of the proposed disposition as provided by Chapter 343, HRS, and Chapter 11-200, HAR, this project will probably have minimal or no significant effect on the environment and is therefore exempt from the preparation of an environmental assessment.
3. Cancel Revocable Permits S-6710 to Myron Higashi and S-5377 to Douglas Sherman.
4. Subject to the Applicants fulfilling all of the Special Conditions listed above, authorize the issuance of a term, non-exclusive easement to Tri-Isle covering the subject area for the purposes and under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:
  - A. The standard terms and conditions of the most current term non-exclusive easement document form, as may be amended from time to time;
  - B. The easement may be assigned with the prior written consent of the Chairperson;
  - C. Review and approval by the Department of the Attorney General; and
  - D. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
5. Authorize the issuance of an immediate management right-of-entry to the Tri-Isle prior to the issuance of the easement document, covering the subject area for the purposes and under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:
  - A. The standard terms and conditions of the most current right-of-entry document form, as may be amended from time to time;

- B Termination of the right-of-entry upon the issuance of the easement; and
- C. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,



Morris M. Atta  
Special Projects Coordinator

APPROVED FOR SUBMITTAL:



Laura H. Thielen, Chairperson





Exhibit (A)



Waipuilani Road

VFW Facility

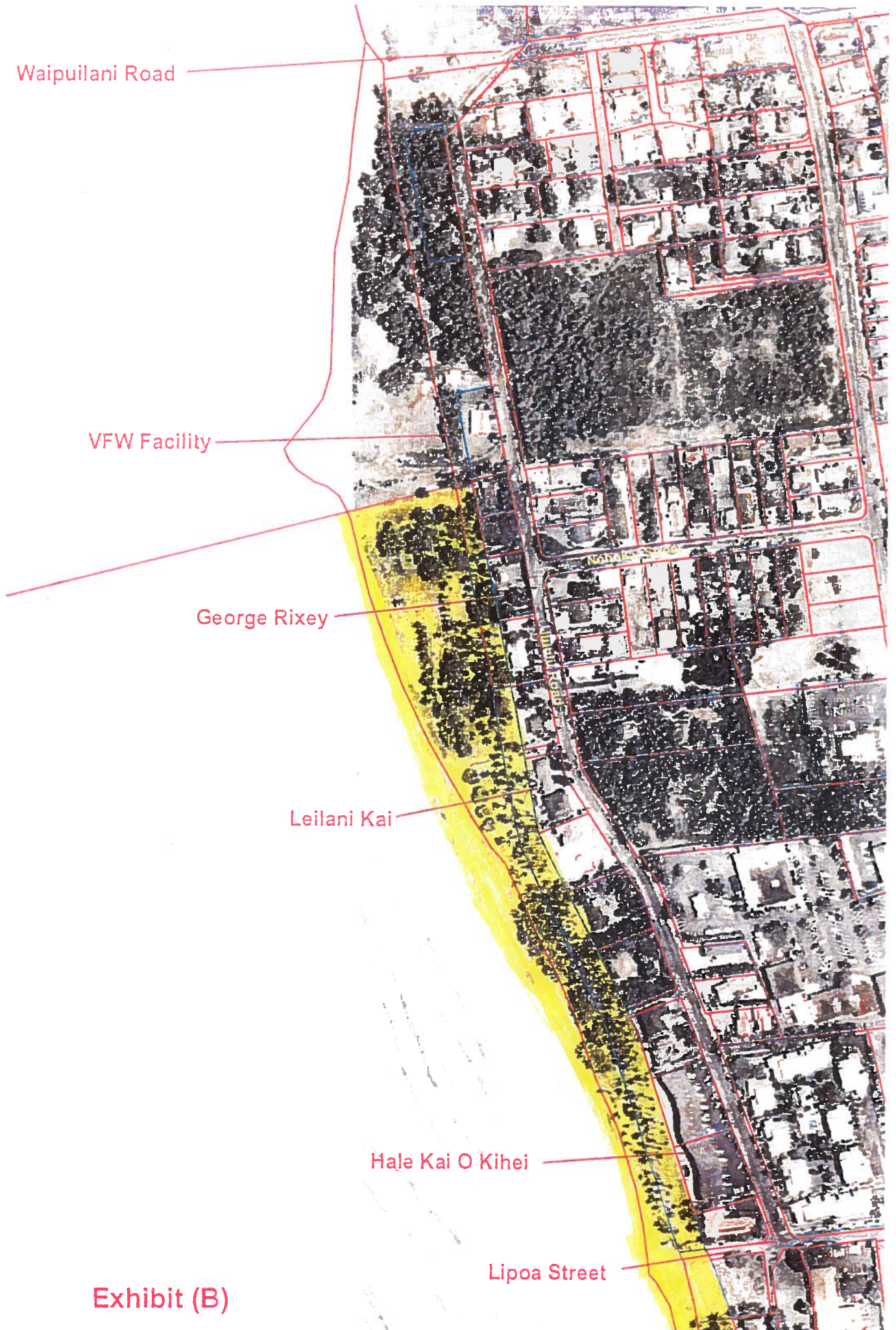
George Rixey

Leilani Kai

Hale Kai O Kihei

Lipoa Street

Exhibit (B)





Hale Kai O Kihei

Lipoa Street

Waiohule Beach Hale

Richard Hoehn

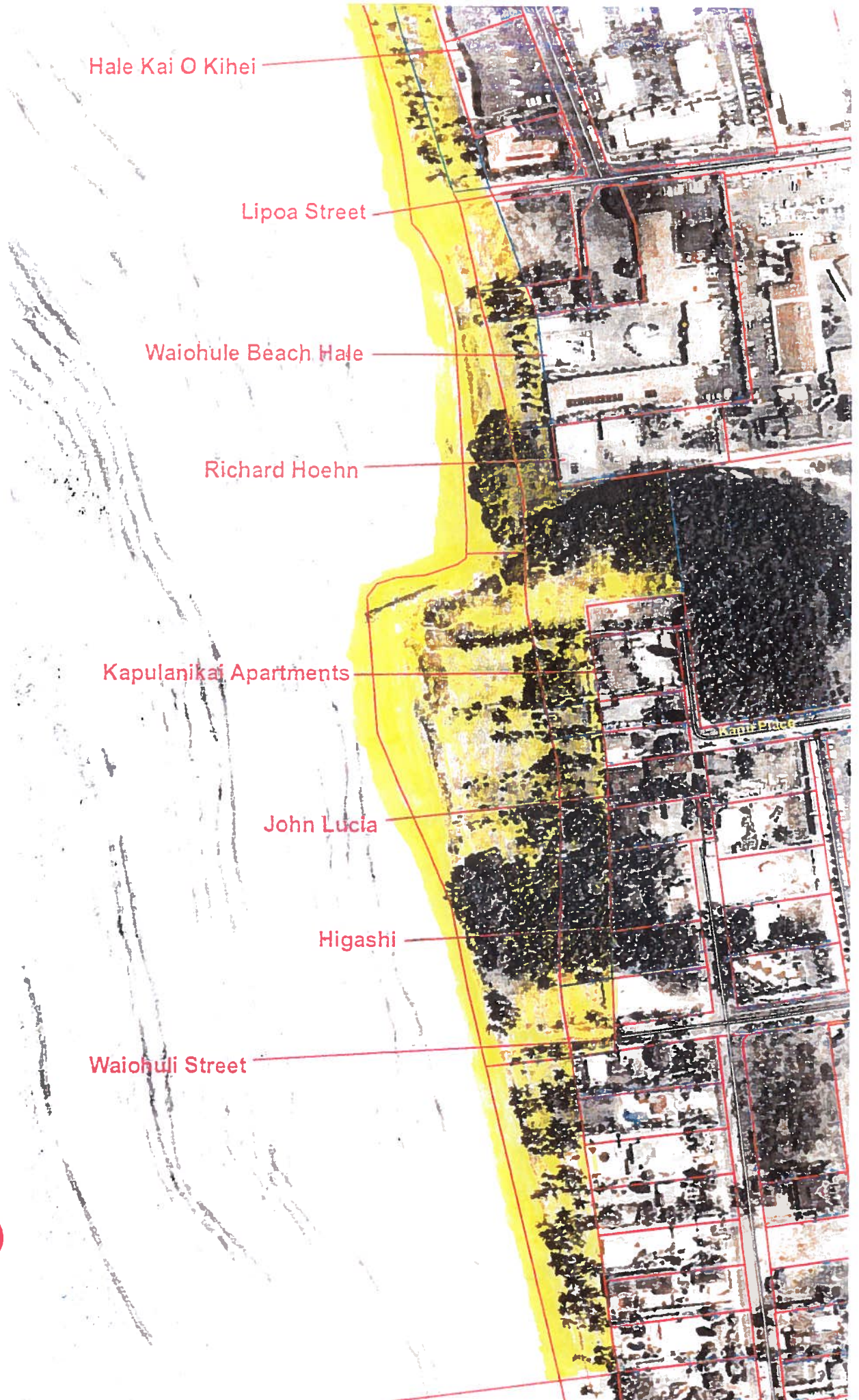
Kapulanikai Apartments

John Lucia

Higashi

Waiohuli Street

Exhibit (C)









**LEGEND:**

- Submerged Edge
- COCONUT TREE
- TREE
- PALM TREE
- IRON WOOD TREE
- SPRINKLER
- CASE BB
- STATION CONTROL VALVE
- WATER VALVE
- DIRECTION OF FLOW
- SHORELINE ACCESS (1/2 N. 40°)

NOTE: Shoreline as located on July/August 1988

<b>WORKSHEET</b>	
D.A.G.S. - SURVEY DIVISION	
KING LATERAL SHORELINE ACCESS	
FILE NO.	FILE IN DR. 87
DATE	DATE
BY	BY
CHECKED BY	CHECKED BY
APPROVED BY	APPROVED BY



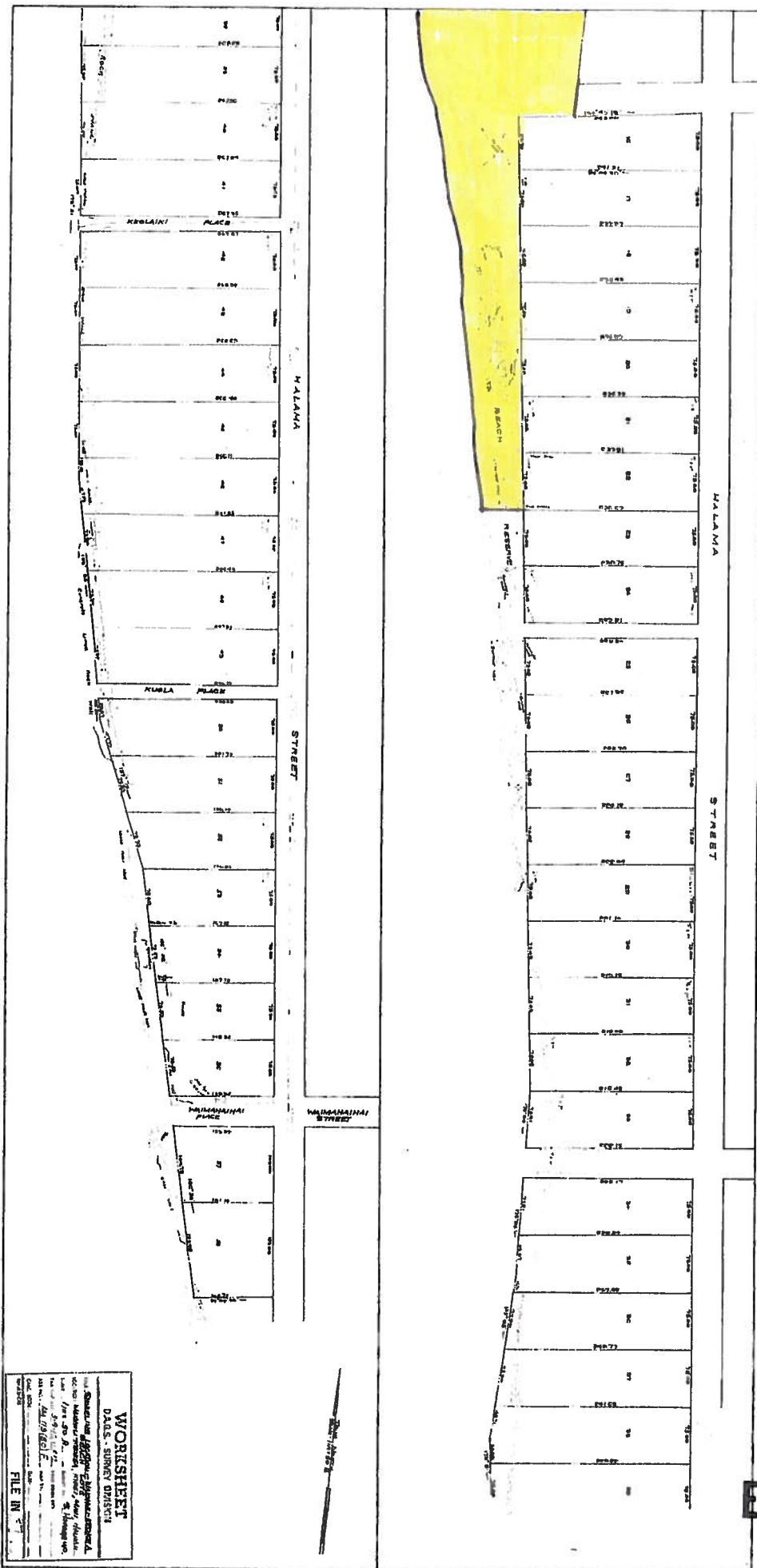


EXHIBIT "D"



**STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
LAND DIVISION**

POST OFFICE BOX 621  
HONOLULU, HAWAII 96809

November 22, 2010

**EXEMPTION NOTIFICATION**

regarding the preparation of an environmental assessment pursuant to Chapter 343, HRS and Chapter 11-200, HAR

**Project Title:** Authorize the Chairperson of the Department of Land and Natural Resources to Negotiate the Terms and Conditions, and Sign a Memorandum of Agreement between the Department, Tri-Isle Resource Conservation & Development Council, Inc., and Uluniu Beach Reserve Association regarding Maintenance of the Uluniu Kihei Beach Reserve; Grant of Term, Non-Exclusive Easement to Tri-Isle Resource Conservation & Development Council, Inc. for Land Management Purposes; Cancellation of Revocable Permit S-6710 to Myron Higashi and Revocable Permit S-5377 to Douglas M. Sherman; and Issuance of Management Right-of-Entry, Waiohuli-Keokea Beach Homesteads, Kihei, Maui, Tax Map Key Numbers:(2) 3-9-007: portion of 005, (2) 3-9-007: 065, (2) 3-9-008:001, (2) 3-9-009:011, (2) 3-9-009:031, (2) 3-9-009:032, (2) 3-9-009:033, (2) 3-9-009:034 and (2) 3-9-010:777.

**Project / Reference No.:** 10MD-018

**Project Location:** Waiohuli-Keokea Beach Homesteads, Kihei, Island of Maui

**Project Description:** Authorize Negotiation of Memorandum of Agreement; Grant of Term, Non-Exclusive Easement for Land Management Purposes; Cancellation of Revocable Permits; and Issuance of Management Right-of-Entry

**Chap. 343 Trigger(s):** Use of State Land

**Exemption Class No.:** In accordance with the "Division of Land Management's Environmental Impact Statement Exemption List", approved by the Environmental Council and dated April 28, 1986, the subject request is exempt from the preparation of an environmental assessment under the following:

**EXHIBIT "E"**



Exemption Class No. 1, which states, "Operations, repairs or maintenance of existing structures, facilities, equipment or topographical features, involving negligible or no expansion or change of use beyond that existing" and Class No. 4, that states "Minor alteration in the conditions of land, water, or vegetation".

Exemption List Item(s): (1) Routine maintenance of state lands to remove weeds, brushes, grass and other unwanted overgrowths.  
(2) Routine and emergency removal of boulders, rocks, fallen trees and other debris necessary to maintain state lands in a safe condition.  
(3) Trimming and removal of overhanging tree branches or roots encroaching into abutting private properties.  
(5) Routine and emergency repair and restoration of existing structures and facilities on state lands involving negligible or no expansion or change of use beyond that previously existing.

Consulted Parties: Not applicable

Discussion: The proposed action will facilitate the use and maintenance of State-owned lands for the purpose of restoring and maintaining the natural shoreline habitat and coastal dune ecosystem, maintaining the area mauka of the dunes in a manner appropriate for public access and use, including without limitation, the accommodation and support of the proposed South Maui Coastal Heritage Corridor. Portions of the subject area have been actively maintained as an open public access area at least since 1986. While all of the subject lands were designated as public beach reserves for protection of the coastal resources and use by the general public, the area has been cleared and maintained for such purposes inconsistently and only in a patchwork manner. The purpose of this project is to facilitate a collaborative maintenance relationship with a community organization to ensure that all of the subject state lands will be properly maintained in a uniform manner. While the proposed activities may result in minor alterations to the overgrown conditions within certain areas of the reserve, there will be no change in the pre-existing authorized uses other than some minor allowances for limited irrigation to support the maintenance obligations under set forth by the submittal and anticipated memorandum of agreement. The set aside is not part of a multi-phased project and no significant adverse cumulative impacts are expected.

Recommendation: It is anticipated this project will probably have minimal or no significant effect on the environment and the Board is

recommended to declare this set aside to be exempt from the preparation of an environmental assessment pursuant to the above.

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Laura H. Thielen, Chairperson

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Date